SINGAPORE REPORTS

RE ESTATE OF LIU SINN MINN, DECD.

[C.A. (Wee Chong Jin C.J., Kulasekeram and Tan Ah Tah JJ.) February 7, 1975]

[Singapore — Civil Appeal No. 22 of 1974]

Family Law — Chinese married under Civil Marriage Ordinance who subsequently contracts a union with another woman — Whether marriage a valid customary marriage — Whether children to be deemed legitimate — Marriage not a void marriage within section 93(2) of Women's Charter (Cap. 47) — Civil Marriage Ordinance, 1940, ss. 4 and 5 — Women's Charter (Cap. 47), ss. 4, 5, 6 and 93.

This was an appeal from the decision of the High Court reported in [1974] 2 M.L.J. 9. The facts were that the deceased had married one Ho June Chin under the Civil Marriage Ordinance, 1940. Subsequently he contracted a union with one Chai Siew Hong and had three children from her. After his death Ho June Chin applied for letters of administration. A caveat was lodged by Chai Siew Hong claiming that her three children were the lawful children of the deceased and were entitled to share in his estate. Ho June Chin and her children thereupon commenced proceedings for the determination of the question whether the defendants, the children of Chai Siew Hong were entitled to inherit in the estate of the deceased. The learned trial judge held that they were not so entitled and they appealed to the Court of Appeal.

Held, dismissing the appeal: (1) the learned trial judge was correct in finding that there had in fact been no Chinese customary marriage in this case;

(2) marriage in the expression "void marriage" in section 93(2) of the Women's Charter does not include a Chinese secondary marriage;

(3) the learned trial judge was correct in holding that the children were not children of a "void marriage" and therefore they were not entitled to share in the estate of the deceased.

Cases referred to:-

(1) *Tay Geok Yap & Ors.* v. *Tan Lian Cheow* [1965] 1 M.L.J. 102.

(2) *Ross Smith* v. *Ross Smith* [1963] A.C. 280 at p. 314; [1962] 1 All E.R. 344.

The following cases were also cited in argument: *Russell* v. *Jackson* 9 Hare 387; *De Reneville* v. *De Reneville* [1948] 1 All E.R. 56; *Salvesen* v. *Administrator of Austrian Property* [1927] All E.R. Rep. 78; *Hyde* v. *Hyde* [1861-1873] All E.R. Rep. 175; *In Re D. Wilton* [1900] 2 Chancery 481; *Baindail* v. *Baindail* [1946] 1 All E.R. 342; *Cheni* v. *Cheni* [1962] 3 All E.R. 873; *Starkowski* v. *Attorney-General* [1953] 2 All E.R. 1272; *Re Ding Do Ca decd.* [1966] 2 M.L.J. 220; *Keshav* v. *Bai Gandi* [1915] 17 Bomb. L.R. 584; *R.* v. *Devandra* [1920] 1 M.C. 51; *A.G. of Ceylon* v. *Reid* [1965] 2 M.L.J. 34; *Siew Chun Poon* v. *Khay Chew Tan & Yap Sook Fong* English Court of Appeal 1973 (to be reported in 4 M.C.).

COURT OF APPEAL.

K. S. Rajah (Ag. Director of Legal Aid) and *T. T. Durai* (Asst. Director of Legal Aid) for the appellants.

Wong Pon Tong for the respondents.

Wee Chong Jin C.J.: On 28th May 1941 Liu Sinn Min also known as Lioe Njoek Sin married Ho June Chin in Singapore under the Civil Marriage Ordinance which was repealed in 1961 by the Women's Charter (Cap. 47). Although as a Chinese by race his personal law entitled him to practise polygamy, the operation of section 4(1) of the Civil Marriage Ordinance made him "incapable, during the continuance of such marriage, of contracting a valid marriage with any third person, whether as principal or secondary wife". By virtue of the provisions of section 6(1) of the Civil Marriage Ordinance if, "during the continuance of such marriage, he contracts a union with a woman which but for such marriage would confer rights of succession or inheritance upon . . . issue of such union, no issue of such union shall be legitimate or have any right of inheritance in or succession to" his estate.

It is thus clear beyond doubt that any issue of a union between Liu Sinn Min and any woman other than his wife, Ho June Chin, would be illegitimate and would have no right of succession or inheritance to his estate unless there is any provision in the Women's Charter (Cap. 47) which provides to the contrary.

There are five children of this marriage. In March 1959, eighteen years after the marriage, Liu Sinn Min contracted a union with another woman, Chai Siew Hong. There are three children from this union. Liu Sinn Min died intestate on 23rd July 1972. On 20th November 1972, Ho June Chin, the lawful widow of Liu Sinn Min (hereinafter referred to as "the deceased") petitioned for Letters of Administration to the estate of the deceased. On 18th January 1973 Chai Siew Hong filed a caveat claiming that her three children from her union with the deceased were the lawful children of the deceased and were entitled to share in the estate of the deceased.

On 4th September 1973, Ho June Chin and her five children commenced the present proceedings by Originating Summons as plaintiffs naming Chai Siew Hong's three children as defendants for "a declaration whether the defendants are entitled to inherit the estate or part thereof of the estate of Liu Sinn Min also known as Lioe Njoek Sin, deceased".

Chai Siew Hong in an affidavit affirmed that the deceased cohabited with her as man and wife from 1st March 1959. She affirmed that on that day a small tea party was held by the deceased at her sister's house to mark the occasion of his marriage to her. The tea party was attended by close friends and relatives of the deceased and herself. A photograph of the deceased and herself was also taken on that day at a photographer's studio. She also affirmed that thereafter she was introduced to the deceased's relatives, friends and business colleagues and associates as "Mrs. Liu" and for all practical purposes he had treated her and her children as his wife and legitimate children. She also affirmed that in 1971 he had through his solicitors successfully applied for wife and child relief under the Income Tax Act for her and their children.

Hee Thiam Jin, a nephew of the deceased, in his affidavit affirmed that when he first met Chai Siew Hong in 1959 she was introduced to him as the deceased's "second wife" and to the best of his recollection at several social functions she was introduced to other guests as the deceased's wife.

An office colleague of the deceased from 1967 till the deceased's death, Jeanne Tan nee Lee Siow Chin, in her affidavit affirmed that she was introduced to Chai Siew Hong in her office as the deceased's wife and that at various business and social functions Chai Siew Hong was introduced to other guests as the deceased's wife.

In another affidavit, Foo Chee Kheng, a classmate and office colleague of the deceased also affirmed that the deceased introduced Chai Siew Hong to him in 1959 as his "second wife".

The documentary evidence relevant to the relationship between the deceased and Chai Siew Hong consists of a photograph alleged to be taken on the "marriage" day and duplicate Registration of Birth Certificates of their three children the contents of which show that the deceased was the informant and gave his name as the father and Chai Siew Hong's name as the mother of these children.

The Originating Summons was heard before Choor Singh J. in open court on 11th April 1974. No oral testimony was adduced and the deponents were not cross-examined. Choor Singh J. heard arguments of counsel for the plaintiffs and for the defendants and in a written judgment held that the defendants, issue of the deceased and Chai Siew Hong, were not entitled to share in the estate of the deceased. He held that the evidence before him was insufficient to establish that a Chinese secondary marriage had taken place between the deceased and Chai Siew Hong. He also held that the deceased, having contracted a monogamous marriage under the Civil Marriage Ordinance with Ho June Chin in 1941, had lost the right of taking a "tsip" or secondary wife, a right which he enjoyed under his personal law. Lastly, he held that the expression "void marriage" in section 93(2) of the Women's Charter does not include a Chinese secondary marriage even if he was wrong in his finding that the evidence was insufficient to establish that the deceased and Chai Siew Hong had contracted a union known as a Chinese secondary marriage.

The defendants now appeal against the judgment of Choor Singh J. The first contention on behalf of the appellants is that the learned judge erred in his finding that no Chinese secondary marriage had taken place. It is argued that the affidavit evidence relied on, which was unchallenged and uncontradicted, clearly establishes (1) a common intention on the part of the deceased and Chai Siew Hong to form a permanent union as husband and secondary wife and (2) the formation of the union by the deceased taking Chai Siew Hong as his secondary wife and Chai Siew Hong taking the deceased as her husband. If these two facts are established it is not in dispute that they have contracted a valid Chinese customary marriage. (See *Tay Geok Yap & Ors.* v. *Tan Lian Cheow*[1]).

We are unable to accept the contention that the trial judge erred in finding that there had been in fact no Chinese customary marriage. There is, in our opinion, ample evidence to support the finding. The deceased was at the material time, married. That marriage was by his own choice and to his knowledge, a monogamous marriage. It is legitimate to presume that if, during the lifetime of his wife, he lived and cohabited with another woman, he did not intend that union to be a bigamous one. In those circumstances the evidence that he introduced Chai Siew Hong as his wife to fellow employees and relatives is equivocal. As the trial judge said "The deceased could not be expected to introduce Chai Siew Hong as his mistress. The use of such a derogatory term in her presence would have been highly embarrassing to her". It is not unknown for a married man to have a mistress who bore him children unknown to his wife and to carry on such a liaison for many years. It is also not unknown for a married man to acknowledge the children as his children when their births are registered, nor is it unknown for a married man to successfully obtain income tax or other relief in respect of such illegitimate children. Nor, in our view, does the doctrine of the presumption that arises from long cohabitation in favour of marriage, apply to a case such as the present one.

The second contention urged on behalf of the defendants is that the trial judge was wrong in law in holding that the deceased, who voluntarily elected to marry under a law providing for monogamous marriage, must be deemed to have abandoned or renounced his right to enter into a matrimonial relationship with another woman which was open to him as a Chinese in accordance with Chinese customary law. We reject this contention too. Section 4(1) of the then Civil Marriage Ordinance under which the deceased married his wife specifically provides that "a male person married in accordance with the provisions of this Ordinance shall be incapable, during the continuance of such marriage, of contracting a valid marriage with any third person, whether as principal or secondary wife".

The last contention is that the expression "void marriage" in section 93(2) of the Women's Charter includes a Chinese secondary marriage which is held to be a void marriage. Section 93(2) which was introduced in 1969 provides as follows: —

> "The child of a void marriage, whether born before or after the commencement of this Act, shall be deemed to be the legitimate child of his parents".

The argument urged in support of this contention is that section 93(2) should be construed to give effect to the manifest intention of the legislature to give the status of legitimacy to children who would otherwise be illegitimate because their parents had contracted a union with each other and which union in the eyes of the law did not constitute a valid marriage.

The answer to this contention depends on the meaning of the expression "void marriage". In *Ross Smith* v. *Ross Smith*[2] Lord Morris of Borth-y-Gest said, "considered literally the expression is self-destructive and contradictory". Nevertheless the expression as used in section 93(2) has to be construed. In our opinion, adopting again the language of Lord Morris of Borth-y-Gest, it is used "to denote the situation where a ceremony of marriage does not bring about a marriage". It follows, in our opinion that "marriage" in the expression "void marriage" in section 93(2) does not include a Chinese secondary marriage because it is settled law that no ceremony is essential for a man and a woman to enter into a permanent conjugal relationship as husband and secondary wife. All that is necessary for there to be a Chinese secondary marriage is a common intention to form a permanent union as husband and secondary wife and the formation of the union by the man taking the woman as his secondary wife and the woman taking the man as her husband (see *Tay Geok Yap & Ors.* v. *Tan Lian Cheow*[1]).

We have adopted the rule of strict construction because section 93(2) necessarily affects the legal rights of inheritance and succession of the lawful wife and children of a man who has children from a "void marriage". We agree with the opinion expressed by the trial judge that the legislature, having abolished by the Women's Charter the institution of polygamy, except for those practising the Muslim religion, could not have intended to include the concept of a Chinese secondary marriage in the expression "void marriage".

For all these reasons we would dismiss the appeal.

Appeal dismissed.

Solicitors: *Director of Legal Aid; Ng & Ng.*

WONG YAN MOK v. INDO-MALAYA TRADING CO.

[O.C.J. (Winslow J.) February 10, 1975]
[Singapore — Suit No. 161 of 1973]

Contract — Contract made by agent on behalf of disclosed principal — Whether agent liable.

The plaintiff claimed damages for breach of contract on an alleged failure of the defendant to supply the plaintiff with 300 bales of cotton. The facts as found by the court showed that the defendants had placed the order for the goods on behalf of Sultan Textile Mills (Karachi) Ltd. of Karachi, Pakistan, a named foreign principal of the defendants.

Held: in the circumstances, there was privity of contract between the plaintiff and the foreign principal and therefore the defendants were not liable on the contract.

Case referred to:-

(1) *Miller, Gibb & Co.* v. *Smith & Tyrer Ltd.* [1917] 2 K.B. 141.

SUIT.

Cheng Tim Pin for the plaintiff.

Kirpal Singh for the defendants.

Winslow J.: The plaintiff's claim is for damages for breach of contract on an alleged failure on the part of the defendants to supply the plaintiff with 300 bales of cotton yarn at the rate of 100 bales per month in the latter part of 1972.

I am satisfied in all the surrounding circumstances relating to the conclusion of the contract in question, Ex. D4, which founds the plaintiff's claim that this contract was entered into between the plaintiff as buyers and Sultan Textile Mills (Karachi) Ltd. of Karachi (a named foreign principal of the defendants) as sellers and that 300 bales of cotton yarn were ordered by the plaintiff on 4th September, 1972 on the terms and conditions "stated below and overleaf" as mentioned on the front page of this contract. It is clear too from Ex. D5 which I find that the plaintiff signed or caused to be signed on his behalf by his daughter (PW2) on 5th or 6th September 1972 that the plaintiff was the buyer of the said goods as confirmed by the sellers in Pakistan as per cable at Ex. D6 which the defendant showed the plaintiff on 1st September 1972. I accept the evidence of B. Dass for the defendants in this respect as well as on all disputed matters and reject that of the plaintiff and his witness.

I find that it must have been quite clear to the plaintiff that the defendants were placing the order for the goods in question on behalf of Sultan Textile Mills (Karachi) Ltd. and that the contract by its terms and conditions "stated below and overleaf" as mentioned on the front of Ex. D4 includes a statement to the effect that goods were subject to final confirmation by "our Principals", obviously meaning the named principals of the defendants. Such confirmation had already arrived and been seen by the plaintiff (Ex. D6) before the contract was signed by the plaintiff and this, I find, was the reason why the words "subject to final confirmation from the suppliers" were deleted from the front of the contract and not because the plaintiff wanted to make the defendants liable as principals themselves. I reject his version that the plaintiff had lost confidence in Pakistan mills generally and did not want goods from Pakistan. The only previous contract which the plaintiff had with a seller in Pakistan (see Ex. D3), through the defendants as agents for those principals in Pakistan, had been successfully performed and delivery had taken place and the obligations of the seller fulfilled as promised.

The plaintiff and his witness PW2 are father and daughter. The daughter knows more English than she cares to admit and I am satisfied that she and her father understood the documents in question. DW1 (Dass) was a straightforward witness who carried conviction as to the truth of all that he said — which is more than I can say about the plaintiff and his witness.

Paragraph 518 at page 230 of *Halsbury's* Laws of England Vol. 1 states,

> "Where a person in making a contract discloses both the existence and the name of a principal on whose behalf he purports to make it, he is not, as a general rule, liable on the contract to the other contracting party, whether he had in fact authority to make it or not; but a personal liability may be imposed upon him by the express terms of the contract, by the ordinary course of business, or by usage. In particular when an agent makes a contract on behalf of a foreign principal, there is a presumption based upon the custom of merchants that the agent has no authority to pledge the credit of the foreign principal so as to establish privity of contract between the foreign principal and the third party, and that the agent, although he discloses the name of the principal, contracts personally, unless a contrary intention appears from the contract itself or from the attendant circumstances. But where the foreign principal is brought into privity of contract the presumption does not operate so as to render the agent liable as well as the principal."

The presumption as to custom or usage referred to was originally stated by Blackburn J. in 1872 but his observations have lost their force in relation to situations where the foreign principal is not the buyer but only the seller. There was no question of pledging the credit of the foreign principal by the defendants as agents in Singapore of that foreign principal. Actually, the opposite took place. A Letter of Credit was established by the plaintiff as buyer in favour of the foreign principal in Karachi. Even if any presumption arises, I find that it has been amply rebutted by the contract itself and the attendant circumstances which clearly establish privity of contract between the plaintiff and Sultan Textile Mills (Karachi) Ltd. in Pakistan. (See *Miller, Gibb & Co.* v. *Smith & Tyrer, Ltd.*[1])